

Message Text

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ACTION EB-11

INFO OCT-01 ARA-16 IO-14 ISO-00 SSO-00 NSCE-00 INRE-00

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CIAE-00 COME-00 INR-10 LAB-06 NSAE-00 OIC-04 RSC-01

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FM AMEMBASSY MEXICO

TO SECSTATE WASHDC IMMEDIATE 2214

DEPT OF TREASURY WASHDC PRIORITY

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US MISSION GENEVA 382

LIMITED OFFICIAL USE SECTION 1 OF 2 MEXICO 5051

E.O. 11652: N/A

TAGS: EGEN, UNCTAD

SUBJECT: UNCTAD CHARTER OF ECONOMIC RIGHTS AND DUTIES

TREASURY PASS BRADFIELD

REF: MEXICO 4997

1. SUMMARY. FOUR LDCS AND CANADA AGREED ON "COMPROMISE" TEXT ON PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES, NATIONALIZATION AND MNCS WHICH GROUP B VIEWS AS UNACCEPTABLE CAPITULATION TO LDC POSITION. GROUP OF 77 REPORTEDLY HAS ACCEPTED IT. WHILE GROUP B HAS DISCOURAGED ITS FORMAL INTRODUCTION, IT PROBABLY WILL BE INTRODUCED JUNE 18. WHETHER PRESSURES ON CANADA TO DISASSOCIATE ITSELF WILL BE PRODUCTIVE IS UNCERTAIN.

2. IN TELEPHONE CONVERSATION WITH LEE (CANADA) MORNING OF JUNE 16, SCHWEBEL STATED, IN AGREEMENT WITH COMMENT LEE HIMSELF OFFERED, LIMITED OFFICIAL USE

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THAT IT WOULD BE DESIRABLE TO POSTPONE CONSULTATIONS WITH LDCS AND

CASTANEDA REFERRED TO PARA 7 REFTEL. WHEN LEE SAID HE FELT COMMITTED TO THEM, SCHWEBEL EXPRESSED HOPE THAT GROUP B POSITIONS ON KEY ISSUES, SUCH AS MULTINATIONAL CORPORATIONS WHICH WAS TO BE ADDRESSED IN FRESH U.S. PROPOSAL TO BE INTRODUCED JUNE 17, WOULD NOT BE PREJUDICED. IT WAS REVEALED JUNE 17 BY STANFORD (CANADA) TO USDEL AND UKDEL THAT JUNE 16 CONSULTATIONS WERE ARRANGED AT CANADA'S REQUEST.

3. CANADIAN DEL DESCRIBED SUBSTANCE OF "COMPROMISE" PREPARED BY MEXICO, YUGOSLAVIA, ROMANIA, KENYA AND CANADA, AT GROUP B MEETING MORNING JUNE 17, TEXT OF WHICH READS: QUOTE.

PACKAGE COMPROMISE PROPOSAL INCORPORATING PARAGRAPHS 2, 10 AND 11

1. EVERY STATE HAS FULL PERMANENT SOVEREIGNTY OVER ITS WEALTH AND NATURAL RESOURCES, AND ACCORDINGLY HAS THE INALIENABLE RIGHT FREELY AND EFFECTIVELY TO DISPOSE OF THEM.

2. A) EVERY STATE HAS THE RIGHT TO REGULATE AND CONTROL FOREIGN INVESTMENT IN ACCORDANCE WITH ITS LAWS AND REGULATIONS AND IN CONFORMITY WITH ITS DEVELOPMENT OBJECTIVES AND PRIORITIES.

B) NO STATE WHOSE NATIONALS INVEST IN A FOREIGN COUNTRY SHALL DEMAND PRIVILEGED TREATMENT FOR SUCH INVESTORS.

3. EVERY STATE HAS THE RIGHT TO REGULATE AND SUPERVISE TRANS-NATIONAL CORPORATIONS OPERATING WITHIN ITS NATIONAL JURISDICTION AND TO TAKE MEASURES TO ENSURE THAT SUCH CORPORATIONS COMPLY FULLY WITH ITS LAWS, RULES AND REGULATIONS. OTHER STATES SHOULD COOPERATE WITH SUCH STATES IN THE EXERCISE OF THIS RIGHT.

4. A) THESE RIGHTS INCLUDE THE RIGHT OF A STATE TO NATIONALIZE OR TO TRANSFER OWNERSHIP TO ITS NATIONALS AS AN EXPRESSION OF ITS FULL PERMANENT SOVEREIGNTY.

B) THE EXERCISE OF THIS RIGHT, INCLUDING THE PAYMENT OF APPROPRIATE COMPENSATION TO THE OWNER, SHALL BE IN ACCORDANCE WITH APPLICABLE LAW. IN ANY CASE WHERE THE QUESTION OF COMPENSATION GIVES RISE TO A CONTROVERSY, IT WILL BE SETTLED UNDER THE LIMITED OFFICIAL USE

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NATIONAL JURISDICTION OF THE NATIONALIZING STATE, UNLESS THE STATES CONCERNED AGREE TO SETTLE THE CONTROVERSY IN ACCORDANCE WITH ONE OF THE PEACEFUL MEANS PROVIDED FOR IN ARTICLE 33 OF THE UN CHARTER ON THE BASIS OF SOVEREIGN EQUALITY OF STATES AND THE PRINCIPLE OF FREE CHOICE OF MEANS.

5. STATES TAKING MEASURES IN THE EXERCISE OF THE SOVEREIGN RIGHTS REFERRED TO IN THE PRECEDING PARAGRAPHS OF THIS SECTION SHALL

FULFILL IN GOOD FAITH THEIR INTERNATIONAL OBLIGATIONS. UNQUOTE

4. FREELAND (U.K.), EXPRESSED HIS DISAGREEMENT ON MOST SUBSTANTIVE POINTS OF FOREGOING TEXT AND HIS "DISMAY" AT CANADIAN COLLABORATION IN ITS DRAFTING. DE LACHARRIERE (FRANCE) VOICED STRONG OPPOSITION TO TEXT ON SEVERAL POINTS. SCHWEBEL SHARED EXPRESSED DISMAY, ATTACKED CANADIAN INITIATIVE AS "UNHELPFUL", AND STATED THAT TEXT CONTAINED POINTS THAT USG COULD NOT CONCEIVABLY ACCEPT. DITTMAN (FRG) SAID TEXT WAS NOTHING MORE THAN A GROUP OF 77 PRODUCT, AND THAT CASTANEDA SHOULD BE STRONGLY DISCOURAGED FROM SURFACING IT. MIYAKE (JAPAN) ECHOED FOREGOING CRITICISM. PONTOPPIDAN (DENMARK) CRITICIZED CANADA'S TAKING ON A ROLE WHICH COULD BE MISCONSTRUED AS REPRESENTATIVE OF GROUP B, AND STATED THAT STEPS SHOULD BE TAKEN TO ENSURE THAT GROUP B VIEWS ARE ACCURATELY PRESENTED. SOLE WORD IN DEFENSE OF CANADIANS CAME FROM AUSTRALIAN DEL, AND IT LACKED CONVICTION. LEE (CANADA) EMPHASIZED THAT HE HAD NOT PURPORTED TO SPEAK FOR GROUP B, AND EVEN RAISED SOME DOUBT WHETHER HE HAD ACTED PERSONALLY OR AS CANADIAN REP. BUT HE DEFENSIVELY MAINTAINED THAT HE OWED NO ONE ANY APOLOGIES FOR WHAT HE THOUGHT WAS A DESIRABLE INITIATIVE.

5. DITTMAN DID PRESS CASTANEDA TO BURY THIS FIVE POWER DRAFT BUT WITH NO VISIBLE RESULT. (STANFORD (CANADA) LATER EXPLAINED TO USDEL THAT RATIONALE OF CANADIANS IN ADVANCING THIS ADMITTEDLY INDULGENT DRAFT IS THAT CREDIBILITY OF INDUSTRIALIZED STATES HAS BEEN DESTROYED BY THEIR AGREEMENT TO ADOPTION WITHOUT OBJECTION OF RESOLUTIONS ON ESTABLISHMENT OF A NEW INTERNATIONAL ECONOMIC ORDER BY 6TH SPECIAL SESSION UNGA. CANADA HAD GONE INTO UNGA PLENARY SESSION MAY 1, HE STATED, EXPECTING TO VOTE AND WITH SPEECHES PREPARED IN EXPLANATION OF VOTE, AND WAS STUNNED BY EXTRAORDINARY PROCEDURE OF USG AND OTHERS AGREEING TO RESOLUTIONS' ADOPTION WITHOUT VOTE. RESULT IS THAT GROUP OF 77 LIMITED OFFICIAL USE

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IN MEXICO CITY DISCOUNT FIRM VIEWS EXPRESSED BY USG, EC-9 AND JAPAN AS MERE POSTURING. THEY ARE CONFIDENT THAT, ONCE AGAIN, INTERESTS OF INDUSTRIALIZED STATES WILL BE SOLD OUT. STANFORD INFERRED THAT CANADA FELT NO OBLIGATION TO FIGHT FOR POSITIONS WHICH OTHER INDUSTRIALIZED STATES GAVE AWAY LAST MONTH IN NEW YORK AND MIGHT GIVE AWAY AGAIN NEXT FALL. HE SAID THAT, WHILE HE PERSONALLY BELIEVED ASSURANCES OF USDEL THAT ITS STATEMENTS WERE SERIOUS AND THAT ITS POLICIES HAD SUPPORT AT HIGHEST LEVELS, LDGS DID NOT.

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ACTION EB-11

INFO OCT-01 ARA-16 IO-14 ISO-00 AF-10 EA-11 EUR-25 NEA-14

RSC-01 SSO-00 NSCE-00 INRE-00 USIE-00 OMB-01 TAR-02

SP-03 SWF-02 AGR-20 AID-20 CIAE-00 COME-00 INR-10

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TO SECSTATE WASHDC IMMEDIATE 2215

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6. USDEL AND UKDEL URGED THAT CANADIAN DEL MAKE CLEAR WHEN FIVE-POWER DRAFT FORMALLY INTRODUCED JUNE 18 THAT, WHILE IT HAD BEEN PREPARED TO TAKE PART IN DRAFTING EXERCISE, RESULTS DO NOT ACCORD ON ALL POINTS WITH VIEWS OF GOVT OF CANADA, OR OTHERWISE TO DISASSOCIATE ITSELF. STANFORD INDICATED CANADIAN DEL WOULD SYMPATHETICALLY CONSIDER. HE INDICATED UNHAPPINESS AT CASTANEDA'S STATEMENTS IN TWO NEGOTIATING GROUPS HOOKING CANADA TO THE TEXT.

7. STANFORD WENT OUT OF HIS WAY TO REMARK THAT NOBODY IN OTTAWA KNEW ANYTHING ABOUT UNCTAD CHARTER, PERHAPS WITH A VIEW TO DISCOURAGING USG APPROACH IN OTTAWA. IN ANY EVENT USDEL DISINCLINED TO RECOMMEND SUCH APPROACH, BECAUSE WE SURMISE THAT LEE, AS FONMIN LEGAL ADVISER, IS SENIOR ENOUGH TO MAINTAIN HIS VIEW AND BECAUSE SUCH AN APPROACH WILL FURTHER OFFEND CANADIAN DEL, WHICH WAS PAINED BY VIGOR OF GROUP B, AND ESPECIALLY

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USDEL, CRITICISM.

8. OUTLOOK FOR JUNE 18 IS THAT MOST OF GROUP B WILL REITERATE THAT FIVE-POWER DRAFT IS UNACCEPTABLE BASIS FOR NEGOTIATION. WE HAVE BEEN INFORMED THAT GROUP OF 77 HAS ALREADY AGREED TO ACCEPT FIVE-POWER DRAFT.

9. WHILE THE DRAFT OF THE TEXT HAD NOT BEEN DISTRIBUTED WHEN INFORMAL CONSULTATIONS TOOK PLACE IN LATE AFTERNOON WITH CASTANEDA, ON BASIS OF HIS DESCRIPTION OF IT U.K., DENMARK, U.S., FRG AND JAPAN STATED THAT IT WAS UNACCEPTABLE.

10. IN COURSE THIS MEETING, WHEN CONSEQUENT IMPASSE REACHED, USDEL, IN LIGHT OF SCHWEBEL/FELDMAN TELCON, SAID THAT, WHILE CANADIAN APPROACH (REFTEL, PARA 6) AND FIVE-POWER DRAFT ARE UNACCEPTABLE, MORE PROMISING PATH MIGHT BE SINGLE ARTICLE, WHOSE INTRODUCTORY AFFIRMATION OF PERMANENT SOVEREIGNTY WOULD CONCLUDE BY STATING THAT THE EXERCISE OF THIS RIGHT IS SUBJECT TO COMPLIANCE WITH INTERNATIONAL OBLIGATIONS, A CONDITION THAT CLEARLY WOULD GOVERN REMAINING SUBPARAS WHICH WOULD DEAL WITH FOREIGN INVESTMENT, NATIONALIZATION AND MNCS IN APPROPRIATELY BALANCED TERMS. CASTANEDA EVINCED INTEREST. SCHWEBEL MADE CLEAR THAT THIS WAS MERE TRIAL BALLOON, TO WHICH NEITHER USDEL NOR ANY OTHER GROUP B MEMBER COMMITTED, AND APPROPRIATE RESERVATIONS TO THIS EFFECT WERE ALSO ENTERED BY DANISH, FRG AND UK DELS. AFTER MEETING, FREELAND INDICATED THAT HE THOUGHT IDEA IS VERY PROMISING.

11. WE HAVE IN MIND APPROACH ALONG FOLLOWING LINES: "EVERY STATE HAS SOVEREIGNTY OVER ITS NATURAL WEALTH AND RESOURCES, AND ACCORDINGLY HAS THE INALIENABLE RIGHT FULLY AND FREELY TO DISPOSE OF THEM, SUBJECT TO ITS PERFORMANCE OF ITS RELEVANT INTERNATIONAL OBLIGATIONS, BY: (THEN INDENTING THREE SUBPARAS OF THIS PARA WHICH WOULD EXPRESS IN SUBSTANTIVE TERMS SATISFACTORY TO US PROVISIONS ON FOREIGN INVESTMENT, NATIONALIZATION AND MNCS, WITH, HOWEVER, NO MENTION IN THOSE SUBPARAS OF NATIONAL OR INTERNATIONAL LAW). WE WOULD APPRECIATE SOONEST YOUR VIEWS ON THIS APPROACH.

12. MNCS. USG PROPOSAL SET OUT REFTEL INTRODUCED. YUGOSLAVIA, IRAQ AND MEXICO ALL EXPRESSED APPRECIATION FOR WHAT THEY REGARDED AS LIMITED OFFICIAL USE

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DESIRABLE BUT INADEQUATE REVISION. THEY PRESSED FOR DELETION OF SECOND SENTENCE AND BROADENING OF FINAL PARA TO EMBRACE THEIR DUTY TO COOPERATE. MEXICO MADE MUCH OF REPORT OF GROUP OF EMINENT PERSONS, SAYING NOWHERE WAS THERE TO BE FOUND SUGGESTIONS SUCH AS THOSE IN SECOND SENTENCE USDEL PROPOSAL. USDEL REPLIED THAT IT WAS TIME FOR LDGS TO MAKE CONCESSIONS MATCHING MULTIPLE

CONCESSIONS WHICH CHARACTERIZED NEW USG DRAFT, WHICH USDEL FULLY SPELLED OUT. STATED THAT NEGOTIATION IS MUTUAL MATTER AND THAT, IF LDCS SIT ON THEIR OBDURATE HAUNCHES QUOTING RESOLUTIONS OF 6TH SPECIAL SESSION, OUTLOOK FOR AGREED TEXT WOULD REMAIN BLEAK.

13. DEVELOPMENT ASSISTANCE: GROUP VERY CLOSE TO CONSENSUS ON FOLLOWING TEXTS: PARA 13. "INTERNATIONAL COOPERATION FOR DEVELOPMENT IS THE SHARED GOAL AND COMMON DUTY OF ALL STATES. EVERY STATE SHOULD COOPERATE WITH THE EFFORTS OF DEVELOPING COUNTRIES TO ACCELERATE THEIR ECONOMIC AND SOCIAL DEVELOPMENT BY PROVIDING FAVORABLE EXTERNAL CONDITIONS AND BY EXTENDING ACTIVE ASSISTANCE TO THEM, WITH STRICT MUTUAL RESPECT FOR THE SOVEREIGN EQUALITY OF STATES, FREE OF ANY CONDITIONS CONFLICTING WITH THE INTERESTS OF DEVELOPING COUNTRIES." PARA 4. "EVERY STATE HAS THE PRIMARY RESPONSIBILITY TO PROMOTE THE ECONOMIC SOCIAL AND CULTURAL DEVELOPMENT OF ITS PEOPLE. TO THIS END, EACH STATE HAS THE RIGHT AND THE RESPONSIBILITY TO CHOOSE ITS MEANS AND GOALS OF DEVELOPMENT, TO FULLY MOBILIZE AND USE ITS RESOURCES, TO IMPLEMENT PROGRESSIVE ECONOMIC AND SOCIAL REFORMS AND TO ENSURE THE FULL PARTICIPATION OF ITS PEOPLE IN THE PROCESS AND BENEFITS OF DEVELOPMENT. ALL STATES HAVE THE DUTY, INDIVIDUALLY AND COLLECTIVELY, TO ENDEAVOR TO ELIMINATE OBSTACLES THAT HINDER SUCH MOBILIZATION AND USE."

14. ON PARA 13, PAKISTAN AND INDIA WITHDREW THEIR INSISTANCE ON "FREE OF ANY POLITICAL AND MILITARY CONDITIONS" AND CHINA HAS INDICATED PRIVATELY THAT THEY WILL ALSO GO ALONG, PROBABLY WITH ABOVE TEXT. USDEL PLANS INDICATE FORMAL ACCEPTANCE TOMORROW UNLESS INSTRUCTED TO THE CONTRARY, BUT WILL MAKE VIGOROUS EFFORT TO HAVE "PROVIDING" CHANGED TO "PROMOTING" AND TO INSERT "MUTUAL" BETWEEN "STRICT" AND "RESPECT". WE DOUBT, HOWEVER, THAT WE CAN CARRY THESE AMENDMENTS. ON PARA 4, HAVING OBTAINED SIGNIFICANT 77 CONCESSIONS IN INSERTION OF "TO ENDEAVOR" AND DELETION OF "ALL" IN LAST SENTENCE, USDEL REQUESTS AUTHORITY LIMITED OFFICIAL USE

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ACCEPT PARA 4 AS GOOD, AND BEST OBTAINABLE, RESULT.
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Message Attributes

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Draft Date: 18 JUN 1974
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Disposition Authority: garlanwa
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